

**MINUTES OF THE DECEMBER 2015 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, December 8, 2015, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Mark Costello, Thomas Courtney, and Pam Jochum; Representatives Lisa Heddens, Megan Jones, Rick Olson, and Guy Vander Linden were present.

Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Pettengill convened the meeting at 9:05 a.m.

Fiscal overview Adam Broich presented the LSA fiscal report. Also representing the LSA fiscal services division were fiscal analysts Jeff Robinson and Jess Benson.

Regarding ARC 2239C: Rep. Pettengill expressed appreciation for the additional work on the fiscal analysis of this rule making. In response to a question from Sen. Courtney, Mr. Robinson stated that LSA does not have sufficient information, specifically, city increment calculations, to determine whether the funding stream for the flood mitigation program will be impacted by the tax base reduction that will result from this rule making. Mr. Robinson suggested that the committee also ask the department of revenue about the impact of the rule making on the flood mitigation program.

Regarding ARC 2243C: In response to a question from Sen. Chelgren, Mr. Benson stated that the projection of \$51 million in savings for fiscal year 2016 is reasonable and that the assumption the savings will double to \$102 million in fiscal year 2017 may also be reasonable, but there is insufficient information to definitively confirm these savings. In response to an inquiry from Sen. Jochum, Mr. Benson stated that LSA was not provided with documentation from the human services department but did receive a broad savings analysis regarding the calculation of managed care cost savings (based on a midpoint of 7.5 percent). He added that a full analysis would require actuarial services. In response to questions from Rep. Heddens, Mr. Benson itemized the \$51 million in savings: \$43 million from capitation rates, \$3 to \$4 million in pharmacy savings, and a one-time savings of \$4 million in money back from the Iowa Plan. He stated that no savings were budgeted for the 10 percent penalty on providers that have not signed up with a managed care organization (MCO). Mr. Benson explained that regarding the Medicaid forecast, LSA and the departments of human services and management concur that the set rates will be in the \$43 to \$50 million range.

Regarding ARC 2229C: At the request of Rep. Heddens, Mr. Broich will provide the committee with the amount of educational examiners board reserve funds to be carried over.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter represented the department.

ARC 2267C No action on amendments to chs 41, 42, 54, 56, 64, 117 and 119 which are clarifications and updates related to travel, employment examinations and applicant lists, education financial assistance, and procurements.

ARC 2268C No action on ch 121, contract compliance.

ALCOHOLIC BEVERAGES DIVISION Stephanie Strauss represented the division.

ARC 2255C Proposed 4.1(3), 4.1(4) and 4.6 pertain to the filling and selling of beer in a container other than the original container by class "C" beer permit holders. In response to an inquiry from Rep. Pettengill, Ms. Strauss explained that pursuant to the statute, the rule sets forth the requirements for securely sealing the container so that it is visibly apparent if the sealed container is reopened or the seal is tampered with. In response to an inquiry from Sen. Courtney, Ms. Strauss stated that a person may bring a previously emptied container to the retailer for refilling, recapping and resealing.

ARC 2254C No action on amendments to 16.1 and 16.7 to 16.9 concerning tastings, samplings and trade spending.

DENTAL BOARD Jill Stuecker represented the board.

ARC 2252C Proposed 13.4 pertains to the retired volunteer license. Ms. Stuecker emphasized that there will be no cost to volunteer licensees, who are retired dentists and hygienists. She stated that to reduce the estimated \$90,000 cost of creating the new license, the board is partnering with the medicine board, which is also creating a new license type in the existing online database. In addition, the dental board is working with the database vendor on tools for in-house development at a reduced cost. In response to an inquiry from Sen. Courtney, Ms. Stuecker stated that the Iowa Dental Association supports the creation of the license and worked with the board on the legislation and rule.

ECONOMIC DEVELOPMENT AUTHORITY Tim Waddell and Nichole Hansen represented the authority.

ARC 2263C No questions on proposed ch 22, nuisance property and abandoned building remediation assistance. Rep. Jones expressed appreciation to the authority for its work on this issue, which affects rural and urban areas. Rep. Pettengill concurred.

EDUCATIONAL EXAMINERS BOARD Darcy Hathaway, Duane Magee and Joanne Tubbs represented the board.

ARC 2229C Amendments to ch 12 pertain to a \$4 increase in licensure fees. Ms. Hathaway reported that no one attended the public hearing and that one comment in opposition to the fee increase was received from the Iowa State Education Association (ISEA).

Mr. Magee explained the board's financial history and status. He stated that currently, the board has approximately \$590,000 in reserves. He explained that the board has contributed approximately \$8 million to the general fund pursuant to the annual statutory deposit of 25 percent of licensure fees, the equivalent of four years of board funding at 2015 expenditure levels. In addition, he stated that since 2008, there have been three appropriations from board cash reserves totaling \$1.3 million, including a transfer of \$600,000 from the board to the department of education, pursuant to 2015 Iowa Acts, House File 658, section 52, to fund department software. He explained that, unlike in the past, the board does not have a budget surplus to make up for these losses and will need to raise fees or cut services or a combination of both. Mr. Magee explained that the fee increase will allow the board to maintain cash reserves to meet ongoing expenses and to ensure the continuation of excellent customer service, for example, the processing of a license in 24 to 48 hours. Mr. Magee expressed the board's willingness to participate in ongoing discussions regarding the amendment of the statute that requires an annual 25 percent deposit of licensure fees in the general fund.

Committee members inquired about the justification for the increase in licensure fees to fund a potential budget shortfall, ways to further reduce expenses, and the need for an examination of the statutory requirement that 25 percent of the licensure fees collected annually be deposited in the general fund.

In response, Mr. Magee explained that revenue remains static and expenses increase every year and that the board anticipates a budget deficit for fiscal year 2016 similar to that in 2015. He stated that the increase in cash reserves resulting from the fee increase will preclude the need for an appropriation from the legislature and will allow the funding of ongoing and one-time expenses, such as an upgrade of the electronic fingerprinting equipment. He described cost-saving measures and explained the variation in the number of anticipated transactions, which may cause uncertainty about actual revenue. Mr. Magee stated that if some staff positions go unfilled to protect cash reserves, the level of customer service will necessarily be sacrificed to save money.

Rep. Heddens and Sen. Courtney expressed opposition to the fee increase. Sen. Chelgren asserted that the legislature should revisit and modify the statute that requires 25 percent of licensure fees to be deposited in the general fund.

Motion to delay Sen. Chelgren moved a session delay.

Motion carried On a roll call vote of nine to zero, the motion carried.

ARC 2230C No action on amendments to chs 13, 15, 16, 18, 20, 22 to 24 and 27 concerning background checks for applicants. Rep. Jones expressed appreciation to the board for its work on the amendments.

Educational Examiners Board (continued)

ARC 2237C Proposed amendments to 13.28 and 27.3 pertain to practicum and internship hours related to the professional school counselor endorsement. In response to an inquiry and suggestion from Rep. Pettengill, Ms. Tubbs explained that thus far, only the state's required practicum and internship hours for the addition of a K-8 and 5-12 professional school counselor endorsement have been found to exceed national standards. She stated that review of the required hours for other service area fields would be worthwhile.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Megan Tooker represented the board.

ARC 2240C No questions on proposed amendments to ch 4 concerning campaign disclosure procedures related to the threshold for creating a committee and a maximum allowable contribution. Ms. Tooker stated that the amendments have been well-received by the regulated community. Rep. Pettengill commended the amendments, which mirror the legislation exactly.

INSURANCE DIVISION Tom O'Meara, Rosanne Mead, Dennis Britson and Gary Marquett represented the division.

ARC 2260C No action on amendments to 10.51 to 10.60 pertaining to limited licenses for motor vehicle rental companies and counter employees and for persons who sell portable electronics insurance.

ARC 2258C No action on an amendment to ch 15, the rescission of chs 100 to 105 and the adoption of ch 100 regarding sales of cemetery merchandise, funeral merchandise and funeral services. In response to an inquiry from Sen. Courtney, Mr. Britson explained the use of insurance policies as mechanisms for the funding of funeral arrangements and described division oversight to ensure consumer protection. In response to an inquiry from Sen. Chelgren, Mr. Britson stated that insurance is one of the three security mechanisms set forth in Iowa Code chapter 523A. Rep. Pettengill commended the division for the explanation in the preamble of changes from the Notice based on public comment and for the removal of certain proposed provisions for further review before adoption.

ARC 2259C No action on 50.90 pertaining to an intrastate crowdfunding exemption.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority. Other interested parties included Mike Sinclair of the Iowa Land Title Association.

Regulatory Analysis Proposed amendments to ch 9 pertain to the title guaranty division and were published under Notice of Intended Action in the 9/2/15 IAB as ARC 2128C. Mr. Thompson stated that as part of the association's public comment on the Notice, pursuant to Iowa Code section 17A.4A, the Iowa Land Title Association requested a regulatory analysis regarding the proposed amendments. Mr. Thompson stated that the regulatory analysis provides background information, including the history and requirements of the title guaranty program and key definitions, and that it also identifies and describes pertinent legal precedent concerning the program and the principal issues that have been raised by the Notice. Mr. Thompson summarized the authority's responses to five questions required by Iowa Code section 17A.4A(2)"b" related to the impact of the amendments on small business. He added that the authority will review all public comments received and make changes to the amendments before their adoption.

In response to an inquiry from Rep. Pettengill regarding the definition of hardship, Mr. Thompson stated that the authority concurs with her view on the definition but that the decision by the supreme court constrains the authority's ability to alter the definition.

Mr. Sinclair stated that the association did not find the relief it sought and that, in continuing discussions with the authority, some points of agreement have been reached.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 2264C Proposed amendments to 71.10(3), 72.13(6) and 73.8(7) pertain to safety standards for alterations of residential elevators installed in public buildings and of escalators. Ms. Uehling explained that current rules require that, if a handicapped restricted use elevator is altered, the entire conveyance must be brought up to current codes.

Labor Services Division (continued)

She also explained that for escalator alterations, unless the only components being altered are the brushes, the current rules require that the entire conveyance be brought up to current codes. Ms. Uehling stated that the board believes these provisions discourage alterations and are not good public policy and that the purpose for the amendments is to provide greater flexibility for alterations of these two types of conveyances.

In response to an inquiry from Rep. Pettengill, Ms. Uehling stated that the rule making regarding light curtains, which was recently approved by the board, and this rule making primarily affect handicapped restricted use elevators and ease the administrative process related to alterations. Ms. Uehling clarified for Sen. Costello that the amendments promote grandfathering of handicapped restricted use elevators and escalators and make the American Society of Mechanical Engineers (ASME) standards more flexible in Iowa.

ARC 2251C No questions on proposed amendments to 90.6(1) and 91.1 regarding the adoption by reference of current industry standards related to boilers and pressure vessels.

MEDICINE BOARD Mark Bowden represented the board.

ARC 2249C No questions on proposed 13.12 pertaining to the standards of practice for prescribing epinephrine auto-injectors in the name of an authorized facility.

PUBLIC SAFETY DEPARTMENT Barb Edmondson represented the department.

ARC 2266C No questions on proposed amendments to chs 200 to 202 and 210 pertaining to the adoption by reference of fire code provisions.

ARC 2250C Proposed amendments to chs 300 to 302 and 315 concern the adoption by reference in the state building code of certain provisions of the 2015 International Building Code (IBC). In response to an inquiry from Rep. Pettengill, Ms. Edmondson stated that local variances to the electrical code are not permitted but that local flexibility related to the building code has been allowed without compromising public safety.

ARC 2265C No questions on the adoption by reference of the International Existing Building Code in the state historic building code.

ARC 2245C No action on amendments to chs 501, 502, 505 and 550 pertaining to the electrician and electrical contractor licensing program, postsecondary education programs, and the electrical inspection program and inspector qualifications.

SECRETARY OF STATE Carol Olson and Eric Gookin represented the secretary of state. Other interested parties included Matthew Coulter on behalf of the Iowa Vocational Rehabilitation Services Division, Department of Education.

ARC 2262C No questions on proposed amendments to 23.3 to 23.6 and 23.10 pertaining to national voter registration Act compliance related to voter registration in state agencies. Mr. Coulter expressed support for the amendments, which ensure that an effective process for voter registration for persons with disabilities is in place and remove the requirement that agencies offer minors an opportunity to register to vote.

ARC 2269C No questions on proposed amendments to 28.2(2) regarding fees generated by voter registration list requests. Ms. Olson stated that this Notice will be terminated in January.

VOTER REGISTRATION COMMISSION Carol Olson and Eric Gookin represented the commission.

ARC 2246C No questions on proposed amendments to chs 2, 8 and 11 pertaining to online voter registration. Ms. Olson stated that the amended notice adds a public hearing as requested by the public.

ARC 2261C No questions on proposed amendments to 3.2 pertaining to a definition of “political purposes” related to requests for voter registration lists.

STATE PUBLIC DEFENDER Kurt Swaim represented the state public defender. Other interested parties included Bill Wimmer of the Iowa Court Reporters Association, Jim Carney of the Iowa State Bar Association and Lisa Davis-Cook of the Iowa Association for Justice.

ARC 2233C Proposed amendments to chs 1 and 11 to 13 pertain to claims of contract attorneys and other professionals.

State Public Defender (continued)

In response to an inquiry from Rep. Vander Linden, Mr. Swaim explained that one amendment allows the state public defender additional discretion to determine undue burden before denying the attorney's claim for an exception to the 45-day period for filing a timely claim. Mr. Johnson noted that the amendment aligns the rule with the statute.

Mr. Wimmer expressed appreciation to the state public defender for incorporating changes suggested by the association and fully endorsed the amendments. Mr. Carney thanked the state public defender for welcoming discussion about the rules and expressed support for the improvements and fairness afforded by the amendments. Ms. Davis-Cook applauded the changes, in particular, those related to minimum qualifications, and urged support for the amendments.

CORRECTIONS DEPARTMENT Michael Savala and Dan Clark represented the department.

ARC 2256C No action on amendments to ch 37 concerning Iowa state industries.

NATURAL RESOURCE COMMISSION Kelley Myers, Jeff Swearngin and Dale Garner represented the commission. Other interested parties included Rep. Greg Heartsill.

Special Review Rep. Heartsill requested that the committee conduct a special review of 106.7(6) and 106.9 pertaining to prohibited weapons and devices related to methods of taking deer and to transportation tags. Rep. Heartsill stated that his concerns regarding transportation tags and baiting arose because of cases in his home county.

Regarding 106.7(6) pertaining to prohibited weapons and devices related to methods of take, Ms. Myers stated that the use of certain weapons and devices to attract animals, such as the use of domestic animals and bait, is prohibited. She explained that the purpose for the rule is to uphold the principles of fair chase and the tradition and legacy of hunting and that the use of bait is considered to be unethical. Mr. Garner noted that 22 states, including Iowa, prohibit baiting. Ms. Myers and Mr. Garner explained that the concern with baiting is the spread of disease not only in the deer herd but also in livestock. Mr. Garner added that bait does not cause disease but instead facilitates disease transmission where animals congregate and affects the overall health of the deer herd. Ms. Myers stated that instances of baiting have increased and noted that the department cannot prohibit retail sales of bait.

Rep. Heartsill observed that the rule sets forth neither distance limitations in the placement of bait nor an acceptable time period for removing bait before the hunting season to comply with the spirit of fair chase. He pointed out that remnants of salt and mineral blocks can remain in the soil for some time after they are removed or consumed and that a landowner may be cited by the department even if the salt or mineral blocks were removed long before the hunt occurred. He also expressed concern regarding the department's authority to seize property, with the proof of legal take placed on the hunter rather than on substantiation by the department of the allegation of illegal take. Rep. Heartsill suggested that the department clarify specific guidelines for distances and time frames, the exception for normal agricultural activities, and the discretion afforded conservation officers.

In response to questions from committee members, Mr. Garner stated that scents are legal whereas bait is consumable and illegal. He stated that some municipalities have made feeding illegal and explained that some states prohibit the feeding of cervids to prevent disease transmission. He clarified that bait as defined in the rule is illegal year-round and asked that the prevention of disease transmission to livestock and its consequences for the economy of the state be considered.

Regarding 106.9, Ms. Myers stated that the language of the rule is taken almost verbatim from the statute and that the rule is a valuable antipoaching tool. She explained that the rule is intended to ensure that a deer is tagged within a specified period of time before the deer is moved. The tag, which is nearly impossible to remove, demonstrates that the deer has been taken.

Sen. Chelgren expressed concern about the authority of the department to confiscate a dead deer that is moved but not intended for consumption or preservation; the tagging of shed antlers; salvaging a deer that is already decomposing; and consistency in time and degree of decomposition and in decision making by conservation officers statewide.

Natural Resource Commission (continued)

Ms. Myers stated that historically, the intention of the rules has been the removal of the carcass from the field for consumption and for prevention of wanton waste. Mr. Swearngin stated that it is legal to pick up shed antlers that have no tag and that a person who is uncertain about salvaging a deer should contact a conservation officer who is authorized to issue salvage tags, which are printed forms. Mr. Swearngin stated that there are no specific written guidelines but that the training of conservation officers is intended to ensure consistent decision making. Ms. Myers added that the discretion of the conservation officer is based on the totality of specific circumstances. Sen. Chelgren suggested that the department promulgate rules with more specific guidelines to provide consistency statewide.

In response to a request from Rep. Vander Linden, Ms. Myers will provide the committee with the existing rule regarding salvage tags. Mr. Swearngin responded to questions from Sens. Courtney and Costello regarding the issuance of salvage tags in various circumstances.

Rep. Heartsill concurred with the committee's concerns regarding the absence of specifications in the rule of an acceptable distance that a deer may be transported before being tagged. In conclusion, Rep. Heartsill advocated for uniformity in enforcement related to the issues of transportation of a deer and of baiting.

Rep. Pettengill suggested that Rep. Heartsill file legislation to address these issues.

REVENUE DEPARTMENT Victoria Daniels represented the department. Other interested parties included Don Brown on behalf of Cargill, Jennifer Kingland of the Iowa Taxpayers Association, Phil Tuning of John Deere and Mike Ralston of the Iowa Association of Business and Industry.

ARC 2247C No action on amendments to chs 67 and 68 pertaining to the excise tax rate on motor and special fuels and to the biodiesel distribution percentage formula. Ms. Daniels explained that based on a suggestion from a commenter, the department made a change from the Notice by adopting a 1 percent tolerance for blending errors, consistent with industry standards.

ARC 2239C Proposed amendments to chs 15, 18, 219 and 230 pertain to qualification for a manufacturing exemption. Notice of Intended Action on these amendments was published as ARC 2178C (IAB 9/30/15). Ms. Daniels explained that the department concurred with the changes to the Notice requested by the committee at its meeting on October 13, 2015. In this Amended Notice of Intended Action, the applicability date of the proposed amendments was changed from January 1, 2016, to July 1, 2016; a public hearing to be held on December 1, 2015, was added; and the department met with LSA fiscal analyst Jeff Robinson to work on a fiscal analysis. Ms. Daniels stated that the department will submit a revised fiscal estimate when the amendments are Adopted and Filed.

Ms. Daniels reported that a transcript of the public hearing will be made available to the committee. She stated that 16 additional public comments were received, 11 in support of the amendments and 5 comments opposed. She explained that local governments, concerned about sales tax-based programs, and educators are the source of the comments. Ms. Daniels stated that the department has conferred with interested parties, such as the homeland security and emergency management department and the flood mitigation board, regarding the effect of the amendments on flood mitigation programs. In addition, a fiscal analysis will be presented by the department to the tax expenditure committee on December 9, 2015.

Discussion pertained to the fiscal analysis, the effect of the tax exemptions on cities participating in flood mitigation and other programs, whether the exemption is limited to manufacturers, and the statutory authority of the department related to tax policy and to definitions of terms that are not defined in statute.

In response, Ms. Daniels stated that the impact of the exemption on river communities cannot be determined at this time; explained that other types of businesses were considered in the analysis; and stated that the role of the department is to define terms to clarify a rule, which differs from changing a statutory definition. She explained that the department has rescinded rules related to the exemption, including terms not defined in statute, and has proposed definitions for those undefined statutory terms.

Revenue Department (continued)

Sen. Chelgren requested that the department's revised fiscal estimate regarding the general fund revenue reduction, similar to the estimate prepared by LSA, contain four categories instead of three.

Mr. Brown expressed support for the amendments, which he stated will align Iowa's rules with those of adjacent states that exempt parts, including replacement parts, from tax; will provide much needed clarity; and will assist businesses in the use of automated systems for compliance with tax remittance requirements. Ms. Kingland expressed support for the amendments from a tax perspective. Mr. Tuning also expressed support for the amendments. Mr. Ralston stated that the amendments provide sound tax policy and clarify the sales and use tax exemption.

Sen. Courtney stated that the department has exceeded its statutory authority and that the issue should have been addressed by the legislature.

Motion to object

Sen. Courtney moved an objection to the rule making.

Motion failed

On a roll call vote of five to five, the motion failed. [Note: A motion to object requires six affirmative votes.]

Sen. Chelgren suggested that legislators work together to revise the sales tax structure of the state.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Mikki Stier and Deb Johnson represented the department. Other interested parties included Shelly Chandler of the Iowa Association of Community Providers (IACP); Sara Allen of the Iowa Hospital Association; Kelly Meyers on behalf of the Iowa Health Care Association (IHCA), the Iowa Center for Assisted Living (ICAL) and the Iowa Center for Home Care (IHC); and Anthony Carroll on behalf of AARP.

Committee review of emergency rule making Ms. Freudenberg presented notice of the department's intention to propose under Notice of Intended Action and simultaneously to adopt by emergency amendments to 52.1 pertaining to increases in the personal needs allowances for state supplementary assistance. Pursuant to 2015 Iowa Acts, Senate File 505, section 14(3), the department was granted authority for emergency rule making with the stipulation that, before the rules become effective, they be reviewed by the committee. There were no questions on the rule making from the committee.

ARC 2243C

The termination of amendments to 79.1(2) and 83.66 concerns an intellectual disability waiver services cost-savings initiative. In response to an inquiry from Rep. Heddens, Ms. Johnson stated that the department is not implementing and is not requiring the managed care organizations to implement an intellectual disability waiver services cost-savings initiative. Ms. Johnson stated that the department has directed that the managed care organizations' cost neutrality be based on an aggregated average and that services not be capped.

ARC 2242C

Proposed amendments to chs 36, 74, 75, 77 to 79, 81 to 83, 85 and 90 pertain to the implementation of the Medicaid modernization initiative. Ms. Freudenberg summarized the amendments. Ms. Johnson explained that the rule making relates to implementation of the modernization initiative by removing references to current practice, changing the fee-for-service model, referencing the new managed care system and making related technical corrections.

Discussion pertained to the Governor's extension of reimbursement to current Medicaid providers during the transition to managed care; the estate recovery process; uniform incident reporting, billing and internal review systems; the pending contingency plan related to approval of managed care by the Centers for Medicare and Medicaid Services (CMS); safeguards to ensure conflict-free level of care decisions; licensure of nurses associated with managed care organizations (MCOs); and prior authorization requests.

In response, Ms. Johnson explained that current Medicaid providers will receive 100 percent reimbursement for services to members until April 1, 2016. Ms. Stier added that the time period for sign-up by Medicaid members has been extended to March 18, 2016, and that even after that date, members may choose a different managed care organization (MCO) as explained in the enrollment packet. Ms. Stier explained that medical assistance, including amounts paid to MCOs, i.e., capitation fees, is paid on behalf of the member and is subject to recovery from the member's estate regardless of whether the member received the service.

Human Services Department (continued)

Ms. Stier stated that the contingency plan is the continuation of services through the fee-for-service model if CMS delays implementation of managed care. Ms. Johnson stated that each MCO has different incident reporting, billing and internal requirements and systems. She explained the process by which the Iowa Medicaid enterprise (IME) ensures that IME, not an MCO, makes the final determination for any reviews that indicate a change of level of care for a client in a nursing facility. She also stated that nurses associated with MCO-related services must be licensed in Iowa and confirmed that if Medicaid is a person's secondary insurance, prior authorization is required for a service to be covered.

Mr. Johnson clarified the parameters of the Governor's December 7, 2015, press release, which extended the period of time during which current Medicaid providers are able to receive full reimbursement. Whether they are in-network or out-of-network for the current insurance plans, Medicaid providers will receive 100 percent reimbursement for services provided until April 1, 2016.

ARC 2241C

Proposed amendments to ch 88 and new ch 73 concern managed care. Ms. Freudenberg explained that ch 73 provides a single set of rules for managed care, including requirements for an MCO to participate in a contract with the department; enrollment and disenrollment procedures; identification of covered services; provisions regarding access to services and consumer choice of providers; responsibilities for incident reporting, discharge planning, and annual reviews; appeal and grievance processes; records management and documentation; the process for payment to an MCO; payment of claims; quality assurance and program integrity; and technical changes. The amendments to ch 88 reorganize the chapter and remove existing language not related to managed care.

Discussion pertained to the process for and service related to enrollment of members; cost savings and notification related to pharmacies; payment for services during an appeal; language that requires uniform review of decisions and actions by all MCOs; the quality of customer service provided by IME and MCO call centers; medical necessity criteria; time frames and criteria for nursing home discharge; and incorporation in the rules of the April 1, 2016, date for extension of reimbursement for services to current Medicaid providers.

In response, Ms. Stier explained that information about enrollment is provided through the member service center at IME, on the department's Web site, and by traveling teams that provide assistance to groups. Ms. Johnson explained that savings in pharmacy costs will result from the more holistic approach of managed care, which provides a higher level of care coordination and long-term services, supports and therapies. Ms. Stier added that the department encourages MCOs to contract with existing providers, such as pharmacies, and that notification of changes that relate to estate recovery has been provided to members. Ms. Johnson stated that, as is true of current practice, a member may continue to receive a treatment while an appeal is pending but will be required to pay for that treatment if the member loses the appeal and that each MCO will have its own procedures and forms related to its decisions and actions. Ms. Stier summarized the improvements in enrollment communications and service as a result of member comments to IME and the MCOs. Ms. Stier stated that MCOs must adhere to federal criteria and rules related to medical necessity, and Ms. Johnson added that each type of medical necessity is based on the service provided.

Ms. Chandler commended the definition of "emergency services" and the ability of a member to disenroll for good cause, expressed concern about the calculation of rates for home- and community-based services (HCBS) intellectual disability (ID) and brain injury (BI) waivers, requested that the punitive 10 percent reimbursement rate reduction for not contracting with an MCO be eliminated, stated that the critically important standardized incident reporting system should be retained, and requested clarification of recoupment as it applies to providers. Ms. Allen commended the Governor's extension of the time in which current Medicaid providers are able to receive full reimbursement and requested that the provisions of 73.23(3) and those of the contracts be aligned and made consistent and that the term "nonparticipating provider" be defined. In response to a request by Ms. Allen, Ms. Stier will investigate whether the date of the extension will be incorporated in the rule prior to adoption of the rule making.

Human Services Department (continued)

Ms. Meyers expressed concern regarding several issues, including clean claims, benefit reimbursement after enrollment, access to service, incident reporting, involuntary discharge, and credentialing. Mr. Carroll commended the Governor's extension of time and stated that for consistency and clarity, the date of the extension should be incorporated into 73.23(3).

At the request of Rep. Pettengill, Ms. Johnson will provide the committee with a member and provider tool kit to assist constituents. On behalf of Rep. Vander Linden, Ms. Stier agreed to investigate the issue reported to him by a local pharmacy concerning whether a pharmacy must sign up with a pharmacy benefit manager (PBM) or be excluded from an MCO. At the request of Sen. Jochum, Ms. Johnson will investigate whether the time frames and criteria for nursing home discharge are in line with federal law. In response to an inquiry from Sen. Chelgren, Ms. Johnson stated that each MCO must have statewide coverage and explained the payment methodology. In response to a question from Sen. Jochum about removing the "90 percent" provision, Ms. Stier stated that most MCOs have an out-of-network policy to which 73.23(3) conforms. Ms. Johnson, at the request of Rep. Olson, agreed to provide the committee with regular updates (e.g., biweekly or monthly) that include the number of and explanation about provider signups. In response to an inquiry from Rep. Pettengill, Ms. Freudenberg confirmed that the MCOs are required to offer contracts to all current Medicaid providers.

Rep. Pettengill commended the 90-day extension and thanked commenters for requesting specific revisions and asked the department to consider the commenters' suggestions. She also expressed the hope that the new system will be efficient in the provision of service to Medicaid members. Sen. Chelgren thanked the department for providing assistance to legislators, who, in turn, are helping their constituents on Medicaid with enrollment in MCOs. Rep. Heddens expressed concern that the extension of the time frame for member signup is not helpful to members who do not yet know whether their current doctors will be providers under the members' MCOs.

Motion to suspend

Rep. Heddens moved a suspension of Notice ARC 2241C.

Motion failed

On a roll call vote of five to five, the motion failed. [Note: A motion to suspend a Notice of Intended Action requires seven affirmative votes.]

Committee business

The minutes of the November 10, 2015, meeting were approved.

The next meeting was scheduled for Friday, January 8, 2016, at 9 a.m.

Adjourned

The meeting was adjourned at 3:15 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn